91-55

Supreme Court, U.S.
FILED
JUL 5 1991
OFFICE OF THE CLERK

No. 87-1284/2038; 87-1286/2072

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

FRANCIS R. FITZSIMMONS and

ROGER TOWNE (Petitioners)

-vs-

UNITED STATES OF AMERICA (Respondent)

APPENDIX

VOLUME II

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18 USCS Section 1954. **OFFER, ACCEPTANCE, OR SOLICITATION TO INFLUENCE OPERATIONS OF EMPLOYEE BENEFIT PLAN**

Whoever being--

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of his

actions, decision, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined not more than $10,000 or imprisoned not more than three years, or both: Provided, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension benefit plan" means any employee welfare benefit plan or employee

pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974, and (b) "employee organization" and "administrator" as defined respectively in sections 3(4) and 3(16) of the Employee Retirement Income Security Act of 1974 [29 USC Section 1002(4)].

(Added Mar. 20, 1962, P. L. 87-420, Section 17(e), 76 Stat. 42; Oct. 15, 1970, P. L. 91-452, Title II, Section 225, 84 Stat. 930; Sept. 2, 1974, P. L. 93-406, Title I, Subtitle B, Part I, Section 111(a)(2)(C), 88 Stat. 852.)

18 USCS Section 1961. **DEFINITIONS**

As used in this chapter [18 USCS Sections 1961 et seq.]--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit

transactions), section 1029 (relative [relating] to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 134] (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to

unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations)

or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving concealment, buying selling or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes an individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership. corporation, association, or other legal entity, and any

union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate

usurious under STate or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS Sections 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter [18 USC Sections 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USC Sections 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the

Deputy Attorney General of the United States, the Associate Attorney General of the Untied States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS Sections 1961 et seq.] Any department or agency so designated may use in investigations authorized by this chapter [18 USCS Sections 1961 et seq.] either the investigative provisions of this chapter [18 USCS Sections 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, Section 901(a), 84 Stat. 941; Nov. 2, 1978, P. L. 95-575, Section 3(c), 92 Stat. 2465; Nov. 6, 1978, P. L. 95-598. . .)

18 USCS Section 1962.

PROHIBITED ACTIVITIES

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of

his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or though collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activates of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly in the conduct of such enterprise's affairs through a pattern of

racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(Added Oct. 15, 1970, P. L. 91-452, Title IX, Section 901(a), 84 Stat. 942; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle B, Section 7033, 102 Stat. 4398.)

CONSTITUTION

OF THE

UNITED STATES OF AMERICA

AMENDMENT 5

Criminal actions--Provisions concerning--Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States of America

v ROGER TOWNE

EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Docket No. 84-20715

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

) In the presence of the attorney for the government, the defendant appeared in person on this date----------March 3, 1987

) ___ Without Counsel (However, the court advised defendant of right to counsel and asked whether the defendant desired to have counsel appointed by the court, and the defendant thereupon waived his assistance of counsel.)

) _x_ With Counsel: Richard P.
) Zipser

) ___ Guilty, and the court
) being satisfied that there is
PLEA) a factual basis for the plea.
) ___ Nolo Contendere
) _x_ Not Guilty

) There being a verdict of:
) ___ Not Guilty. Defendant
) is discharged.
) _x_ Guilty of Counts 2 and 3
) of the Indictment. And, on
) February 17, 1987, the Court
) having granted Defendant's
) Motion for Arrest of Judgment
FINDING) as to Count Three of the
AND) Indictment;
JUDGMENT) Defendant has been convicted
) as charged of the offense(s)
) of conspiracy to conduct the
) affairs of an enterprise

) through racketeering in
) violation of Title 18, United
) States Code, Section 1962(d).

) The court asked whether
) defendant had anything to say
) why judgment should not be
) pronounced. Because no
) sufficient cause to the
) contrary was shown or appeared
) to the court, the court
) adjudged the defendant guilty
) as charged and convicted and
) ordered that the defendant be
SENTENCE) hereby committed to the
OR) custody of the Attorney
PROBATION) General or his
ORDER) authorized representative for
) imprisonment for a period of
) three (3) years and fined the
) sum of Twenty-Five Thousand
) Dollars ($25,000.00). The
) defendant is ordered to stand

) committed until the fine is
) paid or he is otherwise
) discharged by due course of
) law.

) IT IS FURTHER ORDERED that
) defendant pay a special
SPECIAL) assessment of Fifty Dollars
CONDITIONS) ($50.00) for the use and
OF) benefit of the United States.
PROBATION) IT IS FURTHER ORDERED that the
) appearance bond of the
) defendant is continued pending
) appeal.

) In addition to the special
) conditions of probation
) imposed above, it is hereby
) ordered that the general
) conditions of probation set
) out on the reverse side of
) this judgment be imposed. The
) Court may change the

ADDITIONAL)		conditions of probation,
CONDITIONS)		reduce or extend the period of
OF	)	probation, and at any
PROBATION	)	time during the probation
	)	period or within a maximum
	)	probation period of five years
	)	permitted by law, may issue a
	)	warrant and revoke probation
	)	for a violation occurring
	)	during the probation period.
COMMIT-	)	It is ordered that the
MENT	)	Clerk deliver a certified copy
RECOM-	)	of this judgment and
MENDATION	)	commitment to the
	)	U. S. Marshal or other
	)	qualified officer.

Signed _x_ U. S. District Judge

By ___ U. S. Magistrate

_____

Ralph M. Freeman

Date: March 3, 1987

United States of America

v FRANCIS RICHARD FITZSIMMONS

EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Docket No. 84-20715

AMENDED

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government, the defendant appeared in person on this date--------October 16, 1987

___ Without Counsel (However, the court advised defendant of right to counsel and asked whether the defendant desired to have counsel appointed by the court, and the defendant thereupon waived his assistance of counsel.)

) _x_ With Counsel: Harold
) Gurewitz

) ___ Guilty, and the court
) being satisfied that there is
PLEA) a factual basis for the plea.
) ___ Nolo Contendere
) _x_ Not Guilty

) There being a verdict of:
) ___ Not Guilty. Defendant
) is discharged.
) _x_ Guilty of Counts 1, 2, and
) 5 of the Indictment. And, on
) February 17, 1987, the Court
FINDING) having granted Defendant's
AND) Motion for Arrest of Judgment
JUDGMENT) as to Counts One and Five;
) Defendant has been
) convicted as charged of the
) offense(s) of conspiracy to
) conduct the affairs of an
) enterprise through

racketeering in violation of Title 18, United States Code, Section 1962(d).

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant be hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years and fined the sum of Five Thousand Dollars ($5,000.00). The defendant is ordered to stand

SENTENCE OR PROBATION ORDER

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) committed until
) the fine is paid or he
) is otherwise
) discharged by due
) course of law.

) IT IS FURTHER ORDERED that
) defendant pay a special
) assessment of Fifty Dollars
) ($50.00) for the use and
) benefit of the United States.
) IT IS FURTHER ORDERED that the
) appearance bond of the
) defendant is continued pending
) appeal.

SPECIAL) And on October 16, 1987, the
CONDITIONS) Court having ordered that the
OF) judgment of conviction
PROBATION) be amended to include
) the judgment of
) forfeiture relating
) to Count Two of the
Indictment;

) IT IS FURTHER ORDERED that as
) to Count that defendant shall
) forfeit to the United States
) the sum of Eleven Thousand
) Dollars ($11,000.00) pursuant
) to Title 18, United States
) Code, Section 1963(a).

) In addition to the special
) conditions of probation
) imposed above, it is hereby
) ordered that the general
) conditions of probation set
) out on the reverse side of
) this judgment be imposed. The
) Court may change the
ADDITIONAL) conditions of probation,
CONDITIONS) reduce or extend the period of
OF) probation, and at any
PROBATION) time during the probation
) period or within a maximum
) probation period of five years
) permitted by law, may issue a

) warrant and revoke probation
) for a violation occurring
) during the probation period.

COMMIT-) It is ordered that the
MENT) Clerk deliver a certified copy
RECOM-) of this judgment and
MENDATION) commitment to the
) U. S. Marshal or other
) qualified officer.

Signed _x_ U. S. District Judge

By ___ U. S. Magistrate

_____

Ralph M. Freeman

Date: October 16, 1987

or other person who is claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily and intentionally, with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the unlawful conspiracy--the unlawful undertaking or scheme, he thereby becomes a willful participant, a conspirator.

In order to prove that a defendant become a member of a

conspiracy to violate Section 1962(c) of the RICO statute, the Government must prove that the defendant objectively manifested, through his words or actions, his agreement to participate, directly or indirectly, in the conduct of the affairs of the enterprise, if any, through a pattern of racketeering activity. The Government satisfies its burden if it proves, beyond a reasonable doubt, either that the defendant agreed to personally commit two acts of racketeering or that the defendant agreed that another would commit two acts of racketeering.

One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ITED STATES OF AMERICA,

aintiff,

ANCES RICHARD

TZSIMMONS, et al.,

Defendants.

Criminal

Action No.

84-20715

Hon. Ralph

M. Freeman

/

ORDER GRANTING GOVERNMENT'S

MOTION TO SEAL OFFER OF PROOF

The government having filed a

tion to seal and the court being fully

vised on the premises;

IT IS HEREBY ORDERED that the Offer

Proof and Attachment 1 be and is hereby

aled.

HONORABLE RALPH M. FREEMAN

UNITED STATES DISTRICT COURT JUDGE

ted: November 19, 1985.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

ITED STATES OF AMERICA,

Plaintiff,

ANCIS RICHARD
TZSIMMONS, et al.,

Defendant.

Criminal
Action
No. 84-20715
Hon. Ralph
M. Freeman

/

PROTECTIVE ORDER

The government having filed, rsuant to Rule 16(d)(1), Federal Rules of minal Procedure, a Motion in Limine for otective Order Regarding Defendant tzsimmons, and also having filed, in camera ex parte, an Offer of Proof Regarding dence as to Which the Government Seeks a otective Order together with Attachment 1, the Court, having reviewed all of the erial submitted, including the Defendant

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Fitzsimmons' Response in Opposition to such Motion, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

That, although Attachment 1 would ordinarily be subject to discovery and inspection by the Defendant Fitzsimmons in accordance with Rule 16(a)(1)(A), Federal Rules of Criminal Procedure, because of the special circumstances in this case, as outlined in the Government's Offer of Proof Regarding Evidence as to Which the Government Seeks a Protective Order, discovery of Attachment 1 would not be necessary and appropriate, and would be deferred until such time when, because the special circumstances may have changed, it would no longer be necessary to restrict discovery of this material;

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That Attachment 1 does not contain ulpatory information within the meaning of dy v **Maryland**, 373 US 83 (1963).

That should the government elect to er this material into evidence during the al, or should they elect to use the erial during the presentation of any dence by the defendants, then discovery and pection of this material would no longer be erred and the government would be compelled disclose Attachment 1, pursuant to the cks Act, Title 18, United States Code, tion 3500.

Honorable Ralph M. Freeman
United States District Judge

ed: November 19, 1985.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

CHARLES F. COLLINS,
FRANCIS RICHARD
FITZSIMMONS,
SOL C. SCHWARTZ, and
ROGER TOWNE,

Defendants.

_____/

Criminal Action
No. 84-20715
Hon. Ralph M.
Freeman

ORDER

At a session of the United States District Court for the Eastern District of Michigan, Southern Division, on January 13, 1987,

PRESENT: Honorable Ralph M. Freeman, United States District Judge

These matters having come before the Court on the motions of the Defendant, and upon reading and filing of the briefs filed by the parties and their oral arguments having been heard on November 26, 1986, and for reasons stated on the record on January 15, 1987, and in Memorandum Opinion, dated January 13, 1987.

IT IS HEREBY ORDERED that the following Motions of the Defendants, as listed below shall be, and are DENIED:

1. Defendant Collins' Motion for New Trial or in the Alternative for an Evidentiary Hearing.

2. Defendant Schwartz' Motion for New Trial.

3. Defendant Fitzsimmons' Motion for a New Trial Pursuant to Rule 33, Federal Rules of Criminal Procedure.

4. Defendant Towne's Motion for a New Trial Pursuant to Rule 33, Federal Rules of Criminal Procedure.

5. Defendant Schwartz' Motion for Judgment of Acquittal Pursuant to Rule 29(c), Federal Rules of Criminal Procedure.

IT IS FURTHER ORDERED that Defendant Towne's Motion for a Judgment of Acquittal Pursuant to Rule 29(c), Federal Rules of Criminal Procedure, or in the Alternative for Arrest of Judgment Pursuant to Rule 34, Federal Rules of Criminal Procedure, is DENIED as to all Counts of which verdicts of guilt were rendered against the Defendant Towne, except that Towne's Motion for Arrest of Judgment is GRANTED as to Count Three and DENIED as to Count Two of the Indictment.

IT IS FURTHER ORDERED that Defendant Fitzsimmons' Motion For Judgment of Acquittal Pursuant to Rule 29(c), Federal Rules of Criminal Procedure, , or in the Alternative, for Arrest of Judgment Pursuant to Rule 34, Federal Rules of Criminal Procedure, is DENIED as to all counts of which verdicts of guilt were rendered against

the Defendant Fitzsimmons, except that Fitzsimmons' Motion for Arrest of Judgment is GRANTED as to Counts One and Five and DENIED as to Count Two of the Indictment.

_____

Honorable Ralph M. Freeman
United States District Judge

Dated: February 17, 1987.

DATE OF TAPE:	5/1/85
FILE NUMBER:	
CASE AGENT:	CHRISTINE A. SIMPSON
TRANSCRIBED BY:	KARYN S. TRUDEAU - 8/19/85
REVIEWED BY:	CHRISTINE A. SIMPSON

5/1/85

LEONARD SCHULTZ - LS

FRANCIS RICHARD FITZSIMMONS (Dick) - FF

SA MICHAEL J. CARONE - MC

LS: I'll tell you, when he died, he owed, everybody gave him money I did too you know I got stuck for money too when he died. But ah, I remember you know your dad loved MAXIE.

FF: Mm hmm.

LS: You know your dad and MAXIE were very close. I once had lunch with your dad and MAXIE, I think what kind of a, and then I took him to the hospital he had a heart attack MAX. After we had lunch with your dad he, he, he, he, he, he got into a heart attack.

FF: What'd you do?

LS: I, I took him to the hospital. So what I'm tryin' to say is ya see it ain't like it use to be. There's nothin' no more out there. What do they say when ya sit in the can you wonder, and you

wonder what the fuck did I do to get in here. What the shit.

FF: Mm hmm.

LS: Now (unintelligible) calls it then there's no way out. This is nothing. Yesterday we were talking LARRY and I eh, you know how long are you gonna go like this here. Fuck it. Fuck these places. They got no fuckin' gun. Nobody, none of 'em. I'm tellin' ya DICK they won't do nothin' for ya. Hey, I wanna tell ya somethin' all they wanna do is if you're makin' a buck they wanna cut in and take it from you. Did ya hear me?

FF: Mm hmm.

LS: They wanna grab you.

FF: Well as I say ah, LENNY ah, a I, I meant it when I said that if, if I, if I do something ah, and ah, I was involved in these, in anyone of these fuckin' people I'm involved with.

LS: Yeah.

: If I knew any fuckin' thing they could have 'em.

: Yeah.

: You know 'cause what they're fuckin', they're fuckin' around with me just over the fuckinest pitiest goddamn shit and then I don't care how you know how you look at it or ah, un, I'm realistic enough to know that ah, they use, they use that ah, the first time I, I was sold, I was sold out the first time.

: There you are.

: So, see and now this time is ah, I'm not gonna get sold out because goddamn it they're, they're gonna have to prove it.

: Well.

: I, I would have been much better off the first time mother fuck it.

: Yep.

: But I thought I was protecting some people and ah, ah, doin' somethin' for myself.

: Yes.

FF: In the big picture and it didn't turn out that fuckin' way at all.

LS: Well that's where probably where you should ah, probably talk to somebody. You can't talk to your lawyer. You can't talk to your lawyer.

FF: No.

LS: You gotta go down to someone there confidentially sit down and say what can I do for myself (unintelligible) myself and get advice.

FF: Mm hmm.

LS: That's the way to do it.

FF: Well I don't know what the fuck I'm gonna do but I, I do know that I can't ah.

LS: You gotta do somethin'.

FF: I, I can't ah, stay like this. I was thinking of going down to Florida and ah, you know just ah.

LS: Well, you're still gettin' paid with FRANK, aren't ya?

FF: Yeah.

He, he says he would never let you down.

Mm.

He feels terrible. Well, but that's one thing about him. He's a straight guy, he's a honest guy like you.

Yeah, but you know see you could say the money is, is, is important because the fuckin' not, not that he's paid me that much.

Yeah.

But ah, it's the fuckin', ah, it, it's the jobs, see.

Sure.

Cause you know you can't do, you can't go on and on like okay now.

Can't, no one's gonna hire you, DICK.

Right.

No one's gonna hire you and I'm tellin' you DICK you just listen to me. You know when 1 got outta the can way back in the fa, you know in, in the fifties you know where I headed for, I went to gra, eh, I went to, when AL MC NALLY

sent me out to ah, Grand Blanc to mothball those machines and, and you work no heat and it was below zero weather and I still have to get up four o'clock in the morning and ride to Grand Blanc. I didn't get home until six o'clock at night.

FF: Mm hmm.

LS: For a hundred and fifteen dollars a week DICK. (Laughs) Shit you know what if I, if we had one day lay off I couldn't pay the rent. (Laughs) I told 'em I said what kind of job did you send me on? I can't make it. A hundred and fifteen miles I use to hustle I use to sell jewelry, billfolds, any goddamn thing. You know I hadda hustle to keep myself goin'. Well there were some days you'd work four days you know and, and then you'd have to go sit at the hall and sit on the goddamn bench and wait, right? When the, job ended, for another

FF:

LS:

FF:

LS:

FF:

LS:

FF:

LS:

one to start. And you sat there like a dumb idiot. Do you hear me?

Mm hmm.

You know and, and, and this is where we use to get sent and you know and now in those days like you'd go down to Cobo Hall and you'd probably go to work there right?

Yeah, well ah, that's where I'm going tomorrow.

Yeah you're goin' to work at Cobo Hall.

All right, so he helps you out ah, what's his name um.

MC NALLY.

MC NALLY helps ya out, but you know that shit's gonna hit the fan someday too over there. You know that's gonna hit the fan.

Well that's what I'm sayin' to ya.

That's why I, I, I the only.

You know what's gonna happen all ex-convicts are workin' there at Cobo Hall.

FF: Right.

LS: See every guy who comes outta jail goes to work over there.

FF: And so I just think I'm just go down to Florida and look around see what I can find.

LS: What are ya gonna find down there?

FF: I don't know, the ah.

LS: You can't fly back and.

FF: I can't find nothin' here.

LS: Forth here for trial.

FF: You know I can't find nothin' here. You know and I can't eh, I can't survive another fuckin' year here waitin' for the trial.

LS: That CHUCKIE he sure got away with murder that CHUCKIE O'BRIEN. I'll tell ya somethin' you know he's nothin' you know what I gotta tell ya somethin' what he tried to do to me and my kids well TONY was at the club that day and what happened when this thing came down he told them and some reporters eh, that he

was at the club. Follow? And then what happened they asked me if he was at the club, not the reporters, I think it was an FBI Agent or some police the police did. I says I don't know I'll ask my kids so I went to the damn phone and I called my kids up and I said was CHUCKIE O'BRIEN at the club? They said no dad ah, he wasn't here all day he had, he was nowheres near around the place and what happened we told the reporters he wasn't here but then he came and he bitched what the fuck's wrong with your kids why didn't they cover up? I says hold it just a second. If you were at that club my kids would say you're at the club. If you weren't at the club my kids would say you weren't at the club and you and nobody else is gonna have my kids go before a grand jury and lie and put 'em in jail for perjury you go fuck Yourself CHUCKIE O'BRIEN. Did ya hear, I told him that and then I told TONY so

TONY got mad at him cause TONY knows that he wasn't at the club. I said TONY what is this shit with you guys? I says ya come here and you use us, you know what I mean at the club what do you think they, they just used us at the club I said now this guy wants my kids ta lie. Fuck him. He says yeah he says, he said forget it don't worry about it. I says fine I said you know hey come on those are my kids you don't put my kids through that, that shit, shit you know I don't go for that. I'd rather be dead than have my kids go up there and lie but this is what he's tryin' ta do that punk.

FF: Mm hmm.

LS: Then he comes over there one day, my kids called me up he came in then he signed cards new members JIMMY HOFFA, his son and him. Bill it to the Teamsters Local 299. So my kids call me and says guess who joined the club? I

said who's that? He says JIMMY HOFFA and his son and CHUCKIE O'BRIEN. I says and who's gonna pay for it? He says ah, he told us to charge it 299 I said if you ever collect that one I says I'll eat your hat. I says I will bet a million dollars ta a dollar that JIMMY HOFFA don't know that he joined the club and that his son don't know it. Nothin'. That this guy ga, went and pulled this shit. First of all JIMMY HOFFA's on parole, right?

FF: Mm hmm.

LS: How in the hell can he join the club and charge it to 299? He'll go to jail again. I said, I told my kids you, this guy you know he, he's a psychopath he's nuts he'll do anything you don't, you don't know he's crazy.

FF: Yeah.

LS: He's crazy and he's suppose to be you know the closest to JIMMY, close my ass, you know.

FF: Yeah.

LS: He turned, he turned, come on DICK right or wrong that cock sucker he turned. He's a piece of shit. That CHUCKIE O'BRIEN. You know how many times he's embarrassed people? He went up to the deli and some party store and they bought meat they use to buy these steaks and then he went in there and told the guy's son and then he went and charged up nine hundred and somethin' dollars worth of steaks and never paid the guy. The guy called me up he says who is this guy? I says I didn't send him to ya, but that is, that's the way that guy is you know what I mean? Fuck loyal. Uncle TONY everytime that he's around TONY it's Uncle TONY and Uncle this and Uncle that. No that's no kind of shit. Well like I say ah, everybody's had their problems with that guy. You had your problems with him too.

FF: Oh yeah.

LS: Huh? Fuck look at the problems. And he got away with murder that kid. That kid got away with murder and look murder he's, he's back there workin' for MORGAN in Florida, right?

FF: Mm right.

LS: And ah, he's got it made now. He's got it made he's being taken care of pretty good.

FF: Well listen, LENNY, if you ah, ah.

LS: I know I know you called me, you called me for a reason, right?

FF: Ah.

LS: What, what are ya looking for somethin'?

FF: I'm ah, no I wanted you to, ah, eh, if you know this guy KATZ (phonetic) to go and fuckin' tell him somethin'.

LS: Talk to him? I know.

FF: Just tell him to shut his fuckin' mouth.

LS: Yeah, I know SAM real well.

FF: Yeah.

LS: You know what I mean. And ah, yep you know. Why is SAM is doing that? Does he...

FF: That's what.

LS: Have a deal with these guys?

FF: That's what I'd like, I'd like you to find out.

LS: Alright. Must have a deal with these guys here.

FF: See I'm thinkin' even if he ah, you know he, thinkin' ah, okay ah, SAM does this, does that and if you go to him and.

LS: Does he get their mailing business?

FF: Does BOB?

LS: You know mail.

FF: Yeah.

LS: Oh I see. BOB who?

FF: And ah, if, if.

LS: BOBBY HOLMES?

FF: BOBBY done what he says, he says he'd have a talk with 'em. But ah, just as late as ah, two weeks ago, three weeks ago, and the same shit happened.

LS: Yeah.

FF: After all that's what I'd wish you'd do is ah, you know and if ya hear somethin' let me know.

LS: Ya know yeah I'll let ya know give ya a call but I gotta tell ya somethin' DICK, you better put your thinking cap on. Save yourself. I'd, I'd hate to see you go from twenty five seasons. You're, you're gonna die there DICK.

FF: Yeah.

LS: How old are ya now?

FF: Fifty five.

LS: You're gonna die there. Come on. What the fuck, what is this here? You gotta be nuts, you gotta be nuts. I wanna tell you something (unintelligible). Whew! And it's a hell of a thing to tell your wife you know, hey, I think you go ta, you know. You don't want that ta happen.

FF: No, I don't want it. But then, hey, I gotta be real LEN.

LS: (Unintelligible)

FF: They, you know, Jesus Christ, ah...

LS: Can't take her life up either.

FF: That's right.

LS: You know what I mean. That's being selfish. That's being selfish.

FF: You know you're married thirty-five years, thirty-six years for Christ's sake.

LS: Sure that's selfish.

FF: And, and after, after thirty six years.

LS: And she's such a nice gal your wife.

FF: Yeah ah, ya wind up with nothin'. You don't even I, I ain't got no fuckin' pension I got nothin'.

LS: You got no pension either?

FF: Nothin'.

LS: You're kidding?

FF: No.

LS: I can't believe, you mean you didn't wind up with nothin'?

FF: Oh I wound up with ah, a lump sum settlement.

LS: Yeah.

FF: Hey but what the fuck hey that fuckin' thing . . . (unintelligible).

LS: It's gone.

FF: . . . cost me.

LS: No it just cost ya money.

FF: It, it'll cost me my girls gettin' married cost me, you know.

LS: You better do something for yourself pal. I'm tellin' ya, ya better put your thinking cap on here and, and start the worrying about DICK FITZSIMMONS a little bit.

FF: Mm hmm.

LS: 'Cause ain't nobody out there worryin' about you.

FF: That's, that's true.

LS: Ya know? Ya know I gotta tell ya somethin'. You, you, you can do yourself a lot of fa, eh, ah, a lot of harm just by doin' a lot of favors for nothin'. Those are the ones that are killers.

FF: Well hey I, I can't do any favors well fuck eh, I, I'm.

LS: Not no more.

FF: Not in the position to do any.

LS: Not no more, I mean you know.

FF: The, the thing is, is just the way, the way I kinda look at it LENNY okay you fuck me.

LS: You'll get in all kind of trouble.

FF: Ya fuck me, ya fuck my future, ya fuck me ah, ah, my livelihood ya fuck me, hey why the fuck don't you leave me alone.

LS: Yeah, right, right, right, right.

FF: Let me, let me get on with livin'.

LS: That's right, that's right.

FF: You know.

LS: But they won't. Nobody's gonna let you do that.

FF: That's right.

LS: Ain't gonna let up no. I'll tell ya somethin'. I gotta tell ya somethin'. There ain't nothin' more nicer than goin' home and go ta sleep peaceful and.

F: Right.

S: No one knockin' on your door. Remember it's a pleasure.

F: Sure.

S: You know what hindsight is twenty twenty vision.

F: Well that's the way I felt you know.

S: Mm.

F: With this deal with FRANK you know and, and then fuckin' whenever the, like I told.

S: IS COLLINS indicted on this one too?

F: Yeah.

S: Him too.

F: Sure.

S: You know he, he's, he's a, he's a heelin' dealin' kid.

F: Fuck, he's ah, he's ah, ah, suppose o be going away ah, on his other sentence.

S: Yeah.

F: It's under appeal.

S: And he might have a problem with this ne here too.

FF: Right.

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FF: Fuck, he's ah, he's ah, ah, suppose to be going away ah, on his other sentence.

LS: Yeah.

FF: It's under appeal.

S: And he might have a problem with this one here too.

F: This one. He got a public defender.

S: Well he got no money? Who's he got?

F: I don't know. A public defender.

S: I wouldn't, I'll tell ya somethin' DICK I wouldn't feel too comfortable just because a guy come outta the Attorney General's Office at.

F: Oh eh, hey I'm not comfortable but.

S: He's ah, he's just a lawyer.

F: Ya know and, and ah, I searched around ya know fuck I, I, I, I wasn't gonna use CLYDE 'cuz I didn't think ah, he, he's got enough zip ah, he maybe good ah, ah, ya know.

S: He tells ya he has connections but he doesn't.

F: Yeah.

S: He always tells ya I got, hey I know this guy and I know that guy.

F: So this guy is a good.

S: Hey.

FF: Trial lawyer.

LS: Bullshit.

FF: And, ah, ah, that's what ya gotta have and.

LS: All ya gotta have. Ya gotta have yourself. (Laughs)

FF: Good job.

LS: He's only as good as you are. Okay, listen I'll, I'll if I see SAM I'll run into him I'll tell him.

FF: Tell him.

LS: Yeah I'll talk to him. All right, my man I'm sorry to hear it really.

FF: Yeah.

LS: Honest to God, it's a shame. Your brother DON is doin' alright though, huh?

FF: Oh yeah.

LS: Ah huh, he's keepin' his nose clean I hope, huh?

FF: Oh, sure. Yeah.

LS: No more fuckin' around huh?

FF: Right.

LS: Yeah . . .

FF: When did he ever fuck around?

LS: Yeah, him, you know, all he likes is the broads.

FF: Yeah.

LS: Huh? With the girls.

FF: Okay LENNY.

LS: Take care of yourself.

FF: Alrighty.

LS: Lots of luck.

FF: Be good.

LS: Yeah I wanna talk to MARTY ya see.

FF: Yeah.

LS: Ya hear me.

FF: Mm hmm.

LS: Okay.

FF: Okay.

LS: Take care.

(Noise)

(Pause)

(Dialing phone)

(Pause)

LS: Yeah ah, Mr, CARONE or a Mr. INSOGNA please Mr. SCOTT could you tell him to gimme a call ah, that ah, I'd like to see him in my office. Alrighty.

(Hangs up phone)

(Dialing phone)

LS: (Coughs) Yeah, MIKE BANE please. When is MIKE in, I've, we've been missing each other. I've been callin' him for the last few days. He called back I'm not in, then I call back he's not in why don't you do this here for me please ah, if you hear from him ah, within the next half hour or so would you have him call three, five, three, seven, four, nine, four and ask him if he does, if he misses me and I miss him to call me at eight, five, one, one, four, three, oh after three o'clock and tell him Mr. SCHULTZ, S,C,H,U,L,T,Z. Eh, right. No, no honey after three o'clock. After three o'clock. Yeah if he calls in, alrighty? And appreciate if very much.

Thank you. He's on the road? Alright well who, who sings that song WILLIE